

PAUL J. RIEHLE (SBN 115199)  
 paul.riehle@faegredrinker.com  
**FAEGRE DRINKER BIDDLE & REATH  
 LLP**  
 Four Embarcadero Center, 27th Floor  
 San Francisco, CA 94111  
 Telephone: (415) 591-7500  
 Facsimile: (415) 591-7510

CHRISTINE A. VARNEY (*pro hac vice*)  
 cvarney@cravath.com  
 KATHERINE B. FORREST (*pro hac vice*)  
 kforrest@cravath.com  
 GARY A. BORNSTEIN (*pro hac vice*)  
 gbornstein@cravath.com  
 YONATAN EVEN (*pro hac vice*)  
 yeven@cravath.com  
 J. WESLEY EARNHARDT (*pro hac vice*)  
 wearnhardt@cravath.com  
 LAUREN A. MOSKOWITZ (*pro hac vice*)  
 lmoskowitz@cravath.com  
 VANESSA A. LAVELY (*pro hac vice*)  
 vlately@cravath.com  
 M. BRENT BYARS (*pro hac vice*)  
 mbyars@cravath.com  
**CRAVATH, SWAINE & MOORE LLP**  
 825 Eighth Avenue  
 New York, New York 10019  
 Telephone: (212) 474-1000  
 Facsimile: (212) 474-3700

*Attorneys for Epic Games, Inc.*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION**

EPIC GAMES, INC.,

*Plaintiff,*

v.

APPLE INC.,

*Defendant.*

APPLE INC.,

*Counterclaimant,*

v.

EPIC GAMES, INC.,

*Counter-defendant.*

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF J. WESLEY  
 EARNHARDT IN SUPPORT OF  
 STIPULATION AND [PROPOSED] ORDER  
 PERMITTING NON-PARTY DEPOSITION  
 OF ADRIAN ONG OF MATCH GROUP,  
 INC. AFTER THE NON-EXPERT  
 DISCOVERY CUTOFF**

Hon. Yvonne Gonzalez Rogers

1 I, J. Wesley Earnhardt, declare as follows:

2 1. I am a partner at the law firm of Cravath, Swaine & Moore LLP, and I am  
3 one of the attorneys representing Epic Games, Inc. (“Epic”) in the above-captioned action. I am  
4 admitted to appear before this Court *pro hac vice* in *Epic Games, Inc. v. Apple Inc.*, Case No.  
5 4:20-cv-05640-YGR. The contents of this declaration are based on my personal knowledge. If  
6 called to be a witness, I could and would testify competently thereto.

7 2. I submit this declaration pursuant to Civil Local Rule 6-2 in support of the  
8 Stipulated Request for Order Changing Time (the “Stipulation”) in this matter.

9 3. Epic timely served a document subpoena on Match Group, Inc. (“Match  
10 Group”), and, upon Match Group’s identification of its designee, Adrian Ong, timely served a  
11 deposition subpoena on Mr. Ong.

12 4. Epic negotiated with Match Group and secured a deposition date for  
13 Mr. Ong of February 15, 2021, within the Non-Expert Discovery Cutoff fixed by the Court in its  
14 October 6, 2020 Case Scheduling and Pretrial Order (the “Scheduling Order”). (Dkt. 116.)

15 5. On February 11, 2021, counsel for Match Group and Mr. Ong informed  
16 Epic and Apple that Mr. Ong faced an unexpected family medical emergency and would be  
17 unable to sit for the deposition on February 15, 2021 but expected that Mr. Ong would be  
18 available for deposition on February 22, 2021.

19 6. On February 12, 2021, my office requested that Apple stipulate to an  
20 extension of the Non-Expert Discovery Cutoff to permit the deposition of Mr. Ong on  
21 February 22, 2021, and, on February 13, 2021, Apple’s counsel agreed.

22 7. I do not believe that granting the Stipulation will result in changing any  
23 other dates or deadlines in this litigation or the related actions, other than the Court’s Scheduling  
24 Order, and only with respect to the deposition of Mr. Ong.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration on February 15, 2021 in Westchester County, New York.

/s/ J. Wesley Earnhardt  
J. Wesley Earnhardt